

**SUPREME COURT CALENDAR
SACRAMENTO SESSION
FEBRUARY 9, 10, and 11, 2004**

The following cases are placed upon the calendar of the Supreme Court for hearing at its courtroom in the Stanley Mosk Library and Courts Building, Sacramento, California, on February 9, 10, and 11, 2004.

MONDAY, FEBRUARY 9, 2004—1:30 P.M.

- (1) S107355 In re the Marriage of Lamusga
- (2) S103324 People v. Laino
- (3) S113272 Olmstead v. Gallagher & Company
- (4) S109306 Dowhal v. Smithkline Beecham Healthcare
*(George, C.J. and Baxter, J., not participating;
Scotland, P.J. and Sepulveda, J., assigned Justices
Pro Tempore.)*

TUESDAY, FEBRUARY 10, 2004—2:00 P.M.

- (5) S099667 Aguilar v. Lerner
- (6) S106796 People v. Oates
- (7) S024416 People v. Dellano Leroy Cleveland and
Chauncey Jamal Veasley *[Automatic Appeal]*

WEDNESDAY, FEBRUARY 11, 2004—9:00 A.M.

- (8) S102251 State Farm Automobile Insurance v. Garamendi
- (9) S106706 In re Young on Habeas Corpus
- (10) S049389 People v. Thomas H. Lenart *[Automatic Appeal]*

GEORGE
Chief Justice

If exhibits are to be transmitted to this court, counsel must comply with Rule 18(c), California Rules of Court.

**SUPREME COURT CALENDAR
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The following case summaries are issued to inform the public and the press of cases that the Supreme Court has scheduled for oral argument and of their general subject matter. Generally, the descriptions set out below are reproduced from the original news release issued when review in each of these matters was granted and are provided for the convenience of the public and the press. The descriptions do not necessarily reflect the view of the court or define the specific issues that will be addressed by the court.

MONDAY, FEBRUARY 9, 2004—1:30 P.M.

(1) In re the Marriage of Lamusga, S107355

#02-147 In re the Marriage of Lamusga, S107355. (A096012; unpublished opinion.) Petition for review after the Court of Appeal reversed an order in a marital dissolution action. This case presents the following issue: Under *In re Marriage of Burgess* (1996) 13 Cal.4th 25, what factors properly may be considered, and what standard should be applied, when a trial court evaluates a custodial parent's relocation request?

(2) People v. Laino, S103324

#02-29 People v. Laino, S103324. (D037111; unpublished opinion.) Petition for review after the Court of Appeal affirmed a judgment of conviction of a criminal offense. This case includes the following issue: Did defendant's prior guilty plea in Arizona qualify as a "strike" under California's three-strikes law when the charges upon which the guilty plea was entered were dismissed in Arizona without entry of judgment of guilt upon defendant's successful completion of probation?

(3) Olmstead v. Gallagher & Company, S113272

#03-50 Olmstead v. Gallagher & Company, S113272. (A097117; 104 Cal.App.4th 858; Superior Court of San Francisco County; 310158.) Petition for review after the Court of Appeal reversed an order denying attorney fees as

sanctions in a civil action. The court limited review to the following issue: Does Code of Civil Procedure section 128.5 authorize the imposition of sanctions for bad faith conduct or litigation abuses in an action instituted after December 31, 1994, when the misconduct does not involve a pleading abuse, or is the imposition of sanctions in an action filed on or after January 1, 1995, governed solely by Code of Civil Procedure section 128.7?

(4) Dowhal v. SmithKline Beecham Healthcare, S109306 (George, C.J. and Baxter, J., not participating; Scotland, P.J. and Sepulveda, J., assigned Justices Pro Tempore.)

#02-169 Dowhal v. SmithKline Beecham Healthcare, S109306. (A094460; 100 Cal.App.4th 8.) Petition for review after the Court of Appeal reversed the summary judgment in a civil action. This case presents the following issues: (1) Does the Food and Drug Administration Modernization Act of 1997 (21 U.S.C. § 379r) impliedly preempt the requirements of Proposition 65 as to the adequacy of warnings for over-the-counter drugs (see Health & Saf. Code, § 25249.6) in the event of conflict, despite the savings clause precluding express preemption (21 U.S.C. § 379r(d)(2))? (2) Is there a conflict between federal and state law over the required warnings for nicotine replacement therapy products, such as nicotine patches and gum?

TUESDAY, FEBRUARY 10, 2004—2:00 P.M.

(5) Aguilar v. Lerner, S099667

#01-134 Aguilar v. Lerner, S099667. (A091884; 90 Cal.App.4th 177.) Petition for review after the Court of Appeal affirmed a judgment confirming an arbitration award. This case includes the following issue: Is a clause in an attorney-client fee agreement calling for binding arbitration of fee disputes that may arise in the future preempted by the mandatory fee arbitration statutes (Bus. & Prof. Code,

§ 6200 et seq.), which provide that arbitration of a fee dispute is not binding unless the client agrees to binding arbitration after the dispute arises?

(6) *People v. Oates, S106796*

#02-123 *People v. Oates, S106796*. (E029354; 97 Cal.App.4th 1172.) Petition for review after the Court of Appeal modified and affirmed a judgment of conviction of criminal offenses. This case presents the following issue: Can more than one enhancement be imposed under Penal Code section 12022.53(d) for firearm use causing great bodily injury when defendant uses a firearm in the course of committing crimes against separate victims but only one victim suffers great bodily injury?

(7) *People v. Dellano Leroy Cleveland and Chauncey Jamal Veasley, S024416 [Automatic Appeal]*

This matter is an automatic appeal from a judgments of death.

WEDNESDAY, FEBRUARY 11, 2004—9:00 A.M.

(8) *State Farm Automobile Insurance v. Garamendi, S102251*

#02-07 *State Farm Automobile Insurance v. Garamendi, S102251*. (A093193; 92 Cal.App.4th 1169.) Petition for review after the Court of Appeal affirmed the summary judgment in a civil action. This case includes the following issue: Are “Community Service Statements” disclosing insurance sales and cancellations by zip code that are submitted by insurance companies to the Insurance Commissioner pursuant to an administrative regulation (Cal. Code Reg., tit. 10, § 2646.6) subject to public disclosure (Ins. Code, § 1861.07), or is such information exempt from public disclosure pursuant to an exemption in the Public Records Act (Gov. Code, §§ 6250-6277)?

(9) In re Young on Habeas Corpus, S106706

#02-139 In re Young on Habeas Corpus, S106706. (B155373; 98 Cal.App.4th 166.) Petition for review after the Court of Appeal denied a petition for writ of habeas corpus. This case presents the following issue: Did the limitation on sentence credits under the three-strikes law to “one-fifth of the total term of imprisonment” (Pen. Code, §§ 667(c)(5), 1170.12(a)(5)) preclude the Department of Corrections from reducing petitioner’s sentence by up to 12 months under Penal Code section 2935 for performing “a heroic act in a life-threatening situation”?

(10) People v. Thomas H. Lenart, S049389 [Automatic Appeal]

This matter is an automatic appeal from a judgment of death.